IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO 10923 of 2004
with
SPECIAL CIVIL APPLICATION NO 10924 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHISTIA TEXTURISING
versus
UNION OF INDIA
(IN SCA 10923/04)
&
FANCY SYNTHETICS PVT. LTD.
versus
UNION OF INDIA
(IN SCA 10924/04)

Appearance:
1. Special Civil Application No. 10923 of 2004
MS AMRITA M THAKORE for Petitioner No. 1
MS NAYNA K.GADHVI, Addl. Standing Counsel with
MR JITENDRA MALKAN, Standing Counsel for Respondents
(in both matters)

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and

HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 01/11/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

Rule in both the petitions. Ms.Nayna K.Gadhvi, learned Addl. Standing Counsel with Shri Jitendra Malkan, Standing Counsel waive service of Rule for the respondents.

Both these petitions are disposed of by this common order as they are arising out of impugned common order dated 24.7.2003 passed by CEGAT, West Zonal Bench at Mumbai, dismissing the Appeals of both the petitioners filed before it.

Serious grievance is made by learned Counsel Ms.Thakore for the petitioners in both these petitions that though the binding decisions of CEGAT itself was cited the same were not considered by the learned Single Member of the CEGAT and without considering the same their Appeals were dismissed. Ms.Thakore further submitted that Modification Application was rejected by another learned Single Member of CEGAT on the ground that not considering the decision of the learned Single Member of CEGAT cannot be said to be a mistake on facts on record, therefore, the order cannot be interfered by him. It is not in disput that before the learned Single Member of CEGAT the decisions rendered by the learned Single Member of CEGAT were cited, but not considered and dealt with in the impugned order. There is also 2 Members Bench decision of CEGAT in the case of MYSORE TRADING CO. v/s. COMMISSIONER OF CENTRAL EXCISE, BANGALORE, reported in 1999 (107) E.L.T.68, the same was also not considered. However, another learned Single Member of the CEGAT refused to entertain modification Application on the ground that it cannot be said to be an error on the face of the record.

Under the circumstances, we have no option but to allow these petitions only on this ground, namely, that without considering the binding decisions of the CEGAT itself the learned Single Member had dismissed the Appeals. Therefore, the impugned order Annexure : J dated 24.7.2003, passed by the learned Single Member of CEGAT is hereby quashed and set aside. Once that order is set aside then the subsequent order passed by the CEGAT on Modification Application at Annexure : L dated 16.3.2004 has to be quashed and set aside.

Accordingly, both these petitions are allowed and by setting aside the impugned orders at Annexure : J dated 24.7.2003 and Annexure : L dated 16.3.2004, passed by the CEGAT, both the matters are remanded to the CEGAT for deciding the Appeals of both the petitioners in accordance with law after considering the decisions cited before it.

Rule made absolute in both the petitions. However, there shall be no order as to costs. Interim relief granted earlier stand vacated in both the petitions. No order as to costs.

(B.J.Shethna, J.)

Date : November 01, 2004

(Sharad D.Dave, J.)

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